



Claimant alleges she injured her left foot while working for the respondent on Friday, April 26, 1996. On that date, claimant contends she twisted her foot when she stepped from a concrete to a carpeted surface. Claimant testified a coworker witnessed the accident. Claimant also testified that on Monday, April 29, 1996, she called into work and advised the business owner, Brenda Golden, that she hurt her foot at work and was going to see a doctor. On Tuesday, April 30, 1996, claimant saw her family physician who recorded a history of claimant injuring her foot at work on the previous Friday. Claimant also presented the testimony of her 17-year-old daughter, Tina Levier, who testified that claimant told her on the evening of April 26, 1996, that she had injured her foot at work. Unfortunately, the co-worker who allegedly witnessed the accident did not testify.

Ms. Golden testified that she spoke to claimant late Friday afternoon on April 26, 1996, regarding claimant's request for an advance of pay. Ms. Golden testified that claimant did not mention any injury to her at that time. Also, Ms. Golden did not notice that claimant was having problems with her foot. Ms. Golden acknowledges that claimant called in on Monday, April 29, 1996, and advised her that she intended to see a doctor for her foot. However, Ms. Golden denies that claimant told her at that time the foot was injured at work. According to Ms. Golden, claimant did not advise her of a work-related injury until Wednesday, May 1, 1996.

For purposes of preliminary hearing, the Appeals Board finds that claimant has established by the narrowest of margins that it is more probably true than not true that claimant injured her foot at work on Friday, April 26, 1996. Therefore, claimant is entitled to workers compensation benefits associated with that injury. This proceeding should be remanded to the Administrative Law Judge for further adjudication.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated August 28, 1996, should be, and hereby is, reversed; and that this proceeding is remanded to the Administrative Law Judge for further proceedings as the parties may request. The Appeals Board does not retain jurisdiction over this proceeding.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1996.

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Patrick M. Salsbury, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director